

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2399 – SB 2611

March 15, 2016

SUMMARY OF ORIGINAL BILL: Enhances statutory rape by an authority figure to a Class B felony and creates a Class C felony for statutory rape by an authority figure when the defendant is less than four years older than the victim.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures – \$422,000/Incarceration*

SUMMARY OF AMENDMENT (013617): Deletes all language of the original bill except for the effective date provision. Enhances statutory rape by an authority figure to a Class B felony and creates a Class E felony for statutory rape by an authority figure when the victim is between 13 and 16 years of age and the defendant is less than four years older than the victim.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – \$381,700/Incarceration*

Assumptions for the bill as amended:

- Tennessee Code Annotated § 39-13-532 provides that unlawful sexual penetration of a victim by the defendant or of the defendant by the victim is a Class C felony when the victim is between the ages of 13 and 18, the defendant is at least four years older than the victim, and the defendant was in a position of trust or had supervisory or disciplinary power of the victim at the time of the offense.
- The bill as amended enhances the current offense to a Class B felony, and the bill creates a Class C felony for statutory rape by an authority figure when the defendant is less than four years older than the victim.
- Statistics from the Department of Correction (DOC) show a 10-year average of 5.5 admissions per year for statutory rape by an authority figure.
- It is assumed that offenders convicted under the new Class E felony offense for statutory rape by an authority figure will serve 1.47 years, the average time served for a Class E

felony. It is assumed that the bill as amended will result in one admission per year for Class E felony statutory rape by an authority figure.

- According to the DOC, the average operating cost per offender per day for calendar year 2016 is \$67.73.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- A recidivism discount does not apply to new offenses.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 1.47 years (536.92 days) for a total of \$36,365.59 ($\67.73×536.92 days).
- The bill as amended is estimated to result in 5.5 admissions per year being enhanced to Class B felonies.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for one ($5.5 \times .1178$) additional admissions for a total of seven ($5.5 + 1$).
- Statistics from the DOC show that the average time served for statutory rape by an authority figure is 3.1 years.
- The average time served for a Class B felony is 6.59 years. The bill as amended will result in each affected offender serving an additional 3.49 years ($6.59 - 3.1$).
- According to the DOC, 49.2 percent of offenders will re-offend within three years of their release. A recidivism discount of 49.2 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ($7 \text{ offenders} \times .492 = 3 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 4 offenders serving an additional 3.49 years (1,274.72 days) for a total of \$86,336.79 ($\$67.73 \times 1,274.72$ days). The cost for four offenders is \$345,347.16 ($\$86,336.79 \times 4$).
- The bill as amended will result in a total recurring increase in state incarceration costs estimated to be \$381,712.75 ($\$36,365.59 + \$345,347.16$).
- The bill as amended will result in approximately seven Class C felony cases being prosecuted as Class B felonies, but only creates one new felony case per year.
- It is assumed that the courts, district attorneys, and public defenders can handle the impact within their existing resources.
- The Administrative Office of the Courts and the District Attorneys General Conference confirm that they can handle the impact of the bill as amended within existing resources.

**Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/trm